

SETTLEMENT AGREEMENT BY AND BETWEEN THE
STATE BOARD OF REGISTRATION FOR THE HEALING ARTS AND
ROMULO J. FAJATIN, M.D.

Comes now Romulo Fajatin, M.D., ("Licensee") and the State Board of Registration for the Healing Arts ("the Board") and enter into this Agreement for the purpose of resolving the question of whether Licensee's license as a physician and surgeon will be subject to discipline. Licensee and the Board jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to section 621.045, RSMo 2000.

1. Licensee acknowledges that he understands the various rights and privileges afforded by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Licensee; the right to present evidence on Licensee's own behalf; the right to a decision based upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against Licensee; and subsequently, the right to a disciplinary hearing before the Board at which time evidence may be presented in mitigation of discipline. Having been advised of these rights provided to Licensee by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Agreement and agrees to abide by the terms of this document as they pertain to Licensee.

2. Licensee acknowledges that he may, at the time this Agreement is effective or within fifteen days thereafter, submit this Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitutes grounds for discipline of Licensee's license.

3. Licensee acknowledges that he has been informed of his right to consult legal counsel in this matter.

4. Licensee hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees costs and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to §536.087, RSMo, or any claim arising under 42 USC 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case or this Agreement, or from the negotiation or execution of this Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Agreement in that it survives in perpetuity even in the event that any court of law deems this Agreement or any portion thereof void or unenforceable.

5. The parties stipulate and agree that the disciplinary order agreed to by the Board and Licensee in Part II herein is based only on the Agreement set out in Part I herein. Licensee understands that the Board may take further disciplinary action against

Licensee based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered.

6. Licensee understands and agrees that the Missouri State Board of Registration for the Healing Arts will maintain this Agreement as an open record of the Board as required by Chapters 334, 610, 620 and 621, RSMo, as amended.

I.

Based upon the foregoing, Board and Licensee herein jointly stipulate to the following:

JOINT PROPOSED FINDINGS OF FACT

1. The State Board of Registration for the Healing Arts ("the Board") is an agency of the State of Missouri created and established pursuant to § 334.120, for the purpose of executing and enforcing the provisions of Chapter 334, RSMo.

2. Licensee is licensed by the Board as a physician and surgeon, license number 33789. Licensee's license was current and active at all times relevant herein.

3. At all times relevant herein, Licensee was E.P.'s primary care physician at St. Joseph's Health Center, St. Charles, Missouri.

4. On or about March 1999, a 71-year-old female ("E.P.") presented to the Center for treatment of cellulitis, at which time the chronic diagnoses of peripheral vascular disease, cellulitis with non-healing ulcers of the right foot, insulin dependent diabetes mellitus, obesity, hypertension, and carotid artery disease were made. E.P.'s past

medical history was significant for a three-vessel CABG procedure and carotid endarterectomy. She had a bilateral saphenous veins harvesting at the time of her CABG procedure.

5. E.P. was discharged home in late March 1999 and then re-admitted on or about April 10, 1999 at which time the toes on her right foot were found to be gangrenous and revascularization studies were undertaken (angiography); she had poor peripheral vessels, but revascularization was undertaken. E.P. ultimately underwent a below the knee amputation on the right side.

6. Three days after the below the knee amputation, E.P. experienced a right cerebral vascular accident with radiologic studies indicating aspiration and developed urosepsis.

7. On or about May 7, 1999, E.P.'s blood sugar was less than 200 and plans were made to transfer her after rehab evaluation to a skilled nursing unit and then ultimately re-admit her to rehabilitation.

8. On or about May 9, 1999, E.P.'s blood sugars were recorded as 413. She complained of some chest discomfort and cardiac enzymes were negative. The EKG was normal.

9. On or about May 10, 1999, Licensee indicated that E.P. was stable for discharge to Gamma Road Nursing Home ("Gamma Nursing Home"). Her blood sugar

level at this time was recorded as 527, her last recorded white count was 18, 900 and her temperature was 99.6°.

10. On or about May 12, 1999, while a resident at Gamma Nursing Home E.P. became unresponsive and was transferred to Boone Hospital Center ("BHC") in Columbia, Missouri.

11. At the time E.P. was admitted to BHC, her admitting diagnosis was uroses with severe dehydration and prerenal azotemia, hyperosmolar and nonketotic coma. Her blood studies indicated the following levels: sodium 131, potassium 61, chloride 94, bicarbonate 19, glucose 484, BUN 84, creatinine 3.6, albumin 2.8, blood gasses on O² showed a PH of 7.60, white count was 25,000, and the EKG showed sinus tachycardia with poor R wave progression and LVH; suggestions of an old inferior myocardial infarction.

12. E.P. was admitted to the BHC ER by Dr. Toni Almond. She was hydrated aggressively and had continuous O² saturation monitoring, in the first 12 hours she noted mild improvement.

13. On or about May 13, 1999, E.P. became unresponsive and apneic. This progressed to asystole and no aggressive therapy was undertaken per the family's wishes. E.P. subsequently passed away on or about May 13, 1999.

14. Licensee failed to recognize the seriousness of E.P.'s possible systemic infection and her significantly elevated blood sugar levels at the time of discharge.

15. Licensee's medical records failed to justify Respondent's discharge of E.P. to Gamma Nursing Home on or about May 10, 1999.

JOINT PROPOSED CONCLUSIONS OF LAW

16. Based on the foregoing, Licensee's license is subject to disciplinary action pursuant to § 334.100.2(4) and (5), RSMo 2000, which state in pertinent part:

2. The Board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * *

- (4) Misconduct, fraud, misrepresentation, dishonesty, unethical conduct or unprofessional conduct in the performance of the functions or duties of any profession licensed or regulated by this chapter . . .

* * *

- (5) Any conduct or practice which is or might be harmful or dangerous to the mental or physical health of a patient or the public. . .;

* * *

17. Licensee's conduct, as established by the foregoing facts, falls within the intendments of § 334.100.2(4) and (5), RSMo 2000.

18. Cause exists for Board to take disciplinary action against Licensee's license under Section 334.100.2(4) and (5), RSMo 2000.

II.

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the State Board of Registration for the Healing Arts in this matter under the authority of Section 621.110, RSMo 2000. This Agreement will be effective immediately on the date entered and finalized by the Board.

A. Effective the date the Board enters into the Agreement:

1. The license to practice the healing arts, License No. 33789, issued to Licensee is hereby PUBLICLY REPRIMANDED.

CONTINUING MEDICAL EDUCATION

2. Within six (6) months of the effective date of this agreement, Licensee is required to attend 25 hours of Category I continuing medical education (CME) including a course on diabetes. Licensee shall provide the Board with written proof of attendance at and satisfactory completion of the CME course work within thirty (30) days of completion of the course work. These hours shall be in addition to the number of mandatory CME hours required for Licensee to renew his license.

GENERAL REQUIREMENTS

3. For purposes of this Agreement, unless otherwise specified in this Agreement, all reports, documentation, evaluations, notices, or other materials required to

be submitted to the Board in this Agreement shall be forwarded to the State Board of Registration for the Healing Arts, Attention: Investigations, P.O. Box 4, Jefferson City, Missouri 65102.

4. In the event the State Board of Registration for the Healing Arts determines that Licensee has violated any term or condition of this Agreement, the Board may in its discretion, vacate this Agreement and impose such further discipline as the Board shall deem appropriate.

5. This Agreement does not bind the Board or restrict the remedies available to it concerning any other violation of Chapter 334, RSMo, by Licensee not specifically mentioned in this document.

B. In the event the State Board of Registration for the Healing Arts determines that Licensee has violated any term or condition of this Agreement, the Board may in its discretion, vacate this Agreement and impose such further discipline as the Board shall deem appropriate.

C. No additional order shall be entered by this Board pursuant to the preceding paragraph of this Agreement without notice and an opportunity for hearing before this Board as a contested case in accordance with the provisions of Chapter 536, RSMo. If any alleged violation of this Agreement occurs, the parties agree that the Board may choose to conduct a hearing before it as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action.

Licensee agrees and stipulates that the Board has continuing jurisdiction to hold a hearing to determine if a violation of this Agreement has occurred.

D. If the Board determines that the Licensee has violated a term or condition of this Agreement, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or in the circuit court, the Board may elect to pursue any lawful remedies afforded it and is not bound by this Agreement in its election of remedies concerning that violation.

E. Licensee hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees costs and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to §536.087, RSMo, or any claim arising under 42 USC 1983, which may be based upon, arise out of, or relate to any of the matters raised in this agreement, or from the negotiation or execution of this agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this agreement in that it survives in perpetuity even in the event that any court of law deems this agreement or any portion thereof void or unenforceable.

F. In consideration of the foregoing, the parties consent to the termination of any further proceedings based upon the facts set forth herein.

LICENSEE

Romulo J. Fajatin
Romulo Fajatin, M.D. Date
8/8/02

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Moser and Marsalek, P.C. Date
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Attorney for Licensee

BOARD

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Tina Steinman Date
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Loretta Schouten 8/14/02
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Attorneys for Board

EFFECTIVE THIS 21 DAY OF August, 2002.